

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7136

IN THE MATTER OF:

Served April 18, 2003

BARON TRANSPORTATION, INC.,       )  
Suspension and Investigation of    )  
Revocation of Certificate No. 33 )

Case No. MP-2002-42

This matter is before the Commission on respondent's application for reconsideration of Commission Order No. 7067, served March 4, 2003. Respondent seeks reinstatement of Certificate No. 33, which was revoked on August 7, 2002, in Order No. 6763. Respondent's application for reconsideration of Order No. 6763 was denied on October 9, 2002, in Order No. 6846, but that order announced the Commission's decision to consider reopening this proceeding and reinstating Certificate No. 33 as soon as the results of an investigation of respondent in Case No. MP-2002-97 became available. Based on the findings in Case No. MP-2002-97 that respondent operated while suspended and uninsured, we declined to reinstate Certificate No. 33. That decision was announced in Order No. 7067.

**I. BACKGROUND**

Under the Compact, a certificate of authority is not valid unless the holder is in compliance with the insurance requirements of the Commission.<sup>1</sup> The Commission's insurance requirements are expressed in Regulation No. 58. Under that regulation, respondent was required to insure the revenue vehicles operated under Certificate No. 33 for a minimum of \$5 million in combined-single-limit liability coverage and maintain on file with the Commission at all times proof of coverage in the form of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) issued in respondent's name for each policy comprising the minimum.

The \$5 million WMATC Insurance Endorsement on file for respondent expired without being replaced on June 6, 2002, rendering Certificate No. 33 invalid. Order No. 6685, served that same day, noted the automatic suspension of Certificate No. 33 pursuant to Regulation No. 58-02. The order also noted that respondent had failed to pay the \$100 annual fee for 2002, as required by Article IV, Section 4(a), of the Compact, Regulation No. 67 and Order No. 3601. Accordingly, the order directed respondent to cease and desist from conducting transportation subject to the Compact, unless and until otherwise ordered by the Commission. Respondent was given thirty days

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<sup>1</sup> Compact, tit. II, art. XIII, § 7(g).

to file a new WMATC Insurance Endorsement and pay the annual fee or face revocation of Certificate No. 33. Respondent failed to comply, and Certificate No. 33 was revoked in Order No. 6763 on August 7, 2002.

On September 5, 2002, respondent filed an application for reconsideration of Order No. 6763, supported by a \$5 million WMATC Insurance Endorsement, effective September 4, 2002, and a check for \$100. The application was denied in Order No. 6846, served October 9, 2002, because it did not allege any error on the part of the Commission as required by Article XIII, Section 4(a), of the Compact. However, because respondent had replaced the Endorsement and paid the fee, the Commission announced its intention to consider reopening this proceeding and reinstating Certificate No. 33, but that determination was deferred while the Commission investigated respondent in Case No. MP-2002-97.

On March 4, 2003, we issued Order No. 7066 in Case No. MP-2002-97 and Order No. 7067 in this case. Order No. 7066 announced our findings that respondent operated between points in the Metropolitan District on twenty-four separate days while suspended and revoked in knowing and willful violation of Article XI, Section 6(a), of the Compact and that twenty-three of those violations occurred at a time when respondent was uninsured.<sup>2</sup> Order No. 7067, citing Order No. 7066, announced our decision not to reinstate Certificate No. 33.<sup>3</sup>

## **II. RIGHT TO SECOND ROUND OF RECONSIDERATION**

Order No. 7067 represents the culmination of the administrative review process initiated by respondent's application for reconsideration of Commission Order No. 6763. In order to grant the relief requested, we would have to find that respondent's request for reconsideration of an order that essentially affirms Order No. 6763 is properly lodged. It is not.

Under the Compact, a party to a proceeding affected by a final order or decision of the Commission may file within 30 days of its publication a written application requesting Commission reconsideration of the matter involved and stating specifically the

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<sup>2</sup> In re William E. Gillison, t/a Quiana Tours, Quiana Tours, Inc., & Baron Transp., Inc., No. MP-02-97, Order No. 7066 at 4 n.7 (Mar. 4, 2003).

<sup>3</sup> Under the circumstances, the decision not to reinstate Certificate No. 33 was appropriate. See In re ACEP Group Inc., No. MP-02-128, Order No. 7069 (Mar. 4, 2003) (revoking authority where respondent was uninsured while operating under invalid certificate); In re Safe Haven, Inc., No. MP-02-14, Order No. 6762 (Aug. 7, 2002) (declining to reinstate authority where respondent was underinsured while operating under invalid certificate); see also In re VGA Enters. Inc., No. AP-02-34, Order No. 6736 (July 22, 2002) (application denied where applicant continued to operate while suspended and uninsured).

errors claimed as grounds for the reconsideration.<sup>4</sup> If the application is granted, the Commission shall rescind, modify, or affirm its order or decision with or without a hearing, after giving notice to all parties.<sup>5</sup> As we see it, the issue posed by the instant application is whether an order rescinding, modifying, or affirming a prior order is itself subject to reconsideration. The answer is no.

Commission precedent holds that an order denying reconsideration is not subject to reconsideration.<sup>6</sup> This principle applies equally to an order rescinding, modifying, or affirming an order. It is easy to see why. First, an order affirming a prior order has the same effect as an order denying reconsideration. Second, allowing reconsideration of an order rescinding, modifying, or affirming an order would open the possibility of endless administrative appeals as each order resolving an application for reconsideration is met with yet another application for reconsideration. A determined party could bottle up a case inside the Commission indefinitely.

The Compact envisions a process of initial decision, followed by a single round of reconsideration, followed by judicial review. This interpretation is supported by the Compact's authorization of judicial review once "an application for reconsideration has been filed and determined."<sup>7</sup> Respondent's application for reconsideration of Order No. 6763 was finally determined in Order No. 7067. That order is subject to judicial review as of March 4, 2003.

### III. OPPORTUNITY TO DEFEND

Respondent argues that the Commission should have granted a hearing in this proceeding before issuing Order No. 7067 so that respondent would have an opportunity to review the evidence against it. Respondent's criticism is not well founded. First, the Compact makes quite clear that reconsideration may be conducted "with or without a

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<sup>4</sup> Compact, tit. II, art. XIII, § 4(a).

<sup>5</sup> Compact, tit. II, art. XIII, § 4(d).

<sup>6</sup> In re Alexandria, Barcroft & Wash. Transit Co., No. 221, Order No. 1110 (Dec. 11, 1970) (on reconsideration); In re D.C. Transit Sys., Inc., No. 216, Order No. 1067 (July 14, 1970) (on reconsideration), remanded on other grounds, sub nom., Democratic Cent. Comm. v. WMATC, 485 F.2d 886 (D.C. Cir. 1973), cert. denied sub nom., D.C. Transit Sys., Inc., v. Democratic Cent. Comm., 415 U.S. 935 (1974); In re D.C. Transit Sys., Inc., No. 194, Order No. 934 (Mar. 10, 1969) (on reconsideration), rev'd on other grounds, per curiam, sub nom., Yohalem v. WMATC, 412 F.2d 1124 (D.C. Cir. 1969); In re D.C. Transit Sys., Inc., No. 194, Order No. 931 (Mar. 10, 1969) (on reconsideration), rev'd on other grounds, per curiam, sub nom., Yohalem v. WMATC, 412 F.2d 1124 (D.C. Cir. 1969).

<sup>7</sup> Compact, tit. II, art. XIII, § 4(f).

hearing."<sup>8</sup> Second, a hearing on the fruits of the Commission's investigation was offered in Case No. MP-2002-97. Order No. 6977, served December 23, 2002, gave respondent until January 7, 2003, to request a hearing, but no request was made. Offering a hearing in this case would not have been meaningful inasmuch as the record of respondent's unlawful and uninsured operations was adduced in Case No. MP-2002-97.

In addition, as the Commission stated in its decision in Case No. MP-2002-97, "Baron produced the records, which showed that Baron had indeed continued operating between points in the Metropolitan District while suspended and revoked."<sup>9</sup> Baron certainly ought to know what records of operations it produced and the effective dates of its old and new insurance policies.

If respondent had any exculpatory documents to offer, those documents should have been produced in response to Order No. 6810, served September 20, 2002, which directed respondent to produce any and all records and documents in its possession, custody or control relating to its operations in the Metropolitan District during the period under investigation. If respondent had any exculpatory testimony to deliver, it should have requested a hearing in accordance with Order No. 6977. Any exculpatory evidence not reasonably available before the Commission issued its findings in Order No. 7066 should have been proffered in support of an application for reconsideration of that order. As it is, the thirty-day reconsideration filing deadline has passed and may not be waived.<sup>10</sup> Accordingly, the Commission's findings in Order No. 7066 -- that respondent operated unlawfully and that most of those operations occurred while respondent was uninsured -- are no longer subject to review.

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<sup>8</sup> Compact, tit. II, art. XIII, § 4(d).

<sup>9</sup> Order No. 7066 at 2.

<sup>10</sup> In re Paramed Med. Transp., Inc., No. MP-02-50, Order No. 7085 (Mar. 10, 2002); In re Capitol Bus Rental, Inc., t/a Capitol Tours, No. MP-95-04, Order No. 4694 (Nov. 9, 1995); In re Atwood's Transport Lines, Inc., No. 389, Order No. 1730 (Aug. 5, 1977) (on reconsideration); In re Atwood's Transport Lines, Inc., No. 258, Order No. 1327 (May 14, 1974) (on reconsideration); In re Washington, Va. & Md. Coach Co., No. 72, Order No. 819 (May 21, 1968) (on reconsideration); In re D.C. Transit Sys., Inc., No. 131, Order No. 705 (Apr. 27, 1967), appeal dismissed per curiam, sub nom., Powell v. WMATC, No. 20,939, order (D.C. Cir. June 1, 1967); In re D.C. Transit Sys., Inc., Order No. 672 (Feb. 7, 1967), aff'd on reconsideration, Order No. 686 (Mar. 13, 1967), aff'd per curiam, No. 20,899, slip op. (D.C. Cir. Jan. 29, 1968).

#### IV. CONCLUSION

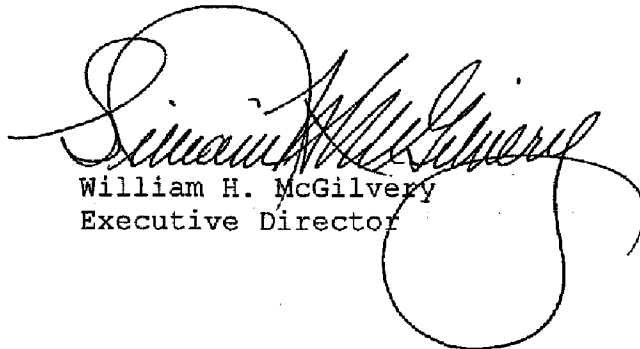
This is not the first time the Commission has deferred determination of an application for reconsideration pending the outcome of another proceeding. In In re Double Decker Bus Tours, W.D.C., Inc., No. AP-95-21, Order No. 4666 (Sept. 22, 1995), the Commission granted reconsideration and then deferred its determination pending resolution of an investigation of the applicant's affiliate by a New York regulatory agency. After the New York proceeding concluded, the Commission modified the underlying order in the case before it. The modifying order was then reviewed by the U.S. Court of Appeals for the D.C. Circuit without further administrative proceedings.<sup>11</sup> For the purpose of calculating when a party has exhausted its administrative remedies, there is no meaningful difference between a deferred determination to modify issued subsequent to a grant of reconsideration and a deferred determination not to reinstate issued subsequent to a denial of reconsideration. In that regard, Order No. 7067 is the equivalent of an order affirming Order No. 6763.

THEREFORE, IT IS ORDERED:

1. That Order No. 7067 represents the Commission's final determination of the application for reconsideration filed in this proceeding on September 5, 2002.

2. That the application for reconsideration filed in this proceeding on April 3, 2003, is dismissed.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, MILLER, AND MCDONALD:



William H. McGilvery  
Executive Director

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<sup>11</sup> Old Town Trolley Tours of Washington, Inc. v. Double Decker Bus Tours W.D.C., Inc., 129 F.3d 201 (D.C. Cir. 1997) (reviewing Commission Order No. 4730).

